

FILED: February 17, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4642
(2:21-cr-00127-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RAYMOND DUGAN

Defendant - Appellant

O R D E R

Upon consideration of appellant's amended motion for remand, the court grants the motion and remands this case to the district court for the limited purpose of allowing resolution of the parties' restitution dispute.

The clerk shall forward a copy of this order, accompanied by a copy of the motion to remand, to the district court. This appeal shall remain on the active docket of this court and the parties shall file a status report on March 20, 2023, and every

30 days thereafter, and shall immediately notify this court when the district court proceedings have concluded.

For the Court

/s/ Patricia S. Connor, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4642
(2:21-cr-00127-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RAYMOND DUGAN

Defendant - Appellant

**AMENDED APPELLANT'S NOTICE OF MOTION FOR
RELIEF PENDING IN COURT BELOW AND UNOPPOSED
REQUEST FOR REMAND**

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Now comes Appellant, Raymond Dugan, by his counsel Shawn A. Morgan and the law firm of Steptoe & Johnson PLLC, pursuant to Federal Rule of Appellate Procedure 12.1, and advises the Clerk of Court of a motion for relief pending in the court below regarding the above-referenced matter. In support of his related request that this Court remand the matter for resolution of the motion while retaining jurisdiction of the appeal, Appellant states as follows:

1. The Judgment Order regarding Appellant's case in the United States District Court for the Southern District of West Virginia was entered on October 27, 2022. Document 121, *United States v. Dugan*, 2:21-cr-00127-1 (S.D. W. Va. Oct. 27, 2022) ("District Court Docket").
2. Appellant timely filed his Notice of Appeal from this final judgment on November 9, 2022. District Court Docket at Document 125.
3. On November 28, 2022, the undersigned was appointed as counsel. Doc 5-1.
4. The undersigned filed the required Appearance of Counsel form and Docketing Statement on December 8, 2022. Doc 8-1 and Doc 7.
5. The undersigned ordered the requisite transcripts on December 8, 2022, and the court reporter filed the Transcript Order Acknowledgement on December 9, 2022. Doc 9-2 and Doc 9-1.
6. A briefing order has not yet been entered.

7. On December 22, 2022, the United States of America filed its Restitution Memorandum. District Court Docket at Document 133.

8. On January 3, 2023, Appellant's trial counsel filed a Motion to Continue Hearing on Restitution and Defendant's Reply to United States' Restitution Memorandum. *Id.* at Document 136.

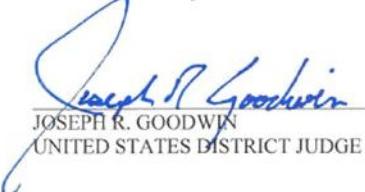
9. In accordance with Federal Rule of Appellate Procedure Rule 12.1(a), Appellant hereby notifies the circuit clerk that the district court entered an Order on January 4, 2023, granting the Motion to Continue and continuing generally the hearing on restitution due to the pending appeal in this matter:

ORDER

Pending before the court is the defendant's unopposed motion to continue hearing [ECF No. 136]. For good cause shown, the unopposed motion to continue hearing is **GRANTED**. The restitution hearing, previously scheduled in the matter for January 12, 2023, at 2:30 p.m., is **CONTINUED GENERALLY** due to the pending appeal in this matter.

The court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: January 4, 2023


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

Id. at Document 137.

10.Of note, the district court's Order did not expressly state that the motion raises a substantial issue; however, all counsel of record regarding this appeal expect that the resolution of issues regarding restitution will trigger the issuance of an Amended Judgment Order, which would become a new final order for purposes of the pending appeal.

11.The parties desire for the Court to retain jurisdiction regarding the pending appeal, but remand this matter for purposes of allowing resolution of the parties' restitution dispute.

12.I have conferred with the assigned Assistant United States Attorney, and the government does not oppose this request for relief.

Wherefore, Appellant respectfully requests that the Court grant the parties' unopposed request and enter an Order retaining jurisdiction regarding the pending appeal, but remanding the matter for resolution of the issue of restitution and the issuance of an Amended Judgment Order.

Dated this 27th day of January 2023.

STEPTOE & JOHNSON PLLC
Of Counsel

/s/ Shawn A. Morgan
Shawn A. Morgan
400 White Oaks Boulevard
Bridgeport, WV 26330
(304) 933-8000

Counsel for Raymond Dugan

CERTIFICATE OF SERVICE

I hereby certify that, on the 27th day of January 2023, a true and accurate copy of the foregoing AMENDED APPELLANT'S NOTICE OF MOTION FOR RELIEF PENDING IN COURT BELOW AND REQUEST FOR REMAND was filed with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

Julie M. White, Esquire
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U.S. Attorney's Office
300 Virginia St., E.
Charleston, WV 25301

/s/ Shawn A. Morgan